



California Fair Political Practices Commission

May 3, 1989

Bob Connelly
Chief Administrative Officer
Assembly Rules Committee
California Legislature
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. A-89-198

Dear Mr. Connelly:

You have requested advice regarding application of the mass mailing provisions of the Political Reform Act (the "Act"),¹ as amended by Proposition 73 on the June 7, 1988 ballot.

QUESTIONS

1. Does the mass mailing prohibition apply to brochures and printed materials which are placed in a distribution box, which is accessible to members of the public in both private and public locations?
2. May the name, district and photograph of the elected officer appear on the distribution box?

CONCLUSIONS

1. The mass mailing prohibition does not apply when members of the public pick up materials, of their own volition, from a distribution box at an agency's offices or a meeting of a public agency or public official. This exception does not apply to materials made available at private locations where a meeting of a public agency or public official is not being held.

2. Materials sent in response to an unsolicited request are not subject to the mass mailing prohibition. Accordingly, the name, district and photograph of the elected officer may appear on the distribution box placed at the locations specified above.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

You have provided us with a distribution box which contains informational brochures and materials prepared by an elected officer. The words "YOU MAY TAKE ONE" appear at the top of the box.

ANALYSIS

Section 89001 of the Political Reform Act, as amended by Proposition 73, provides that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5.)

The Commission has determined that the intent of the voters in adopting Proposition 73 was to prevent elected officers from gaining an advantage from incumbency by using public funds to send out newsletters and other mass mailings which increase their name recognition. At its December 6, 1988 meeting, the Commission adopted Regulation 18901 (copy enclosed), which implements Section 89001. Regulation 18901 provides in pertinent part:

(a) Except as provided herein, a newsletter or other mass mailing is "sent at public expense" within the meaning of Government Code Section 89001 if any of the costs of design, production, printing or distribution, is paid for with public moneys as defined in Government Code Section 85102(e).

(b) A newsletter or other mass mailing is not prohibited by Government Code Section 89001 if it contains only information or material sent in response to unsolicited specific requests contained in written correspondence (including petitions) or oral inquiries received by the elected officer or by an agency with which the officer is affiliated.

Regulation 18901(a) and (b).

Regulation 18901(h), which defines "unsolicited" specific request, provides that:

..."unsolicited" specific request means a communication which is not requested or induced by the elected officeholder or any third person acting at his or her behest....

* * *

Members of the public who come to an agency's offices or to a meeting and who pick up materials for themselves will be deemed to have made an unsolicited specific request for those materials.

Therefore, an unsolicited request for materials is made if individuals come to an agency's offices, or to a meeting held by the agency or official, and pick up these materials for themselves of their own volition. Materials which are actively distributed or which individuals are induced to request by the officeholder or a third person acting at his or her behest are not "sent in response to an unsolicited request." For example, such materials may not be passed out at a school classroom or assembly where the elected officer appears; nor may such materials be provided by elected officers to schools for distribution to students. (See Alquist Advice Letter, No. I-89-109, copy enclosed.)

Additionally, we believe that a request is solicited when an elected officer appears at a public forum or school classroom and indicates that materials which would otherwise fall under the prohibition are available. To conclude otherwise would allow elected officers to induce "unsolicited requests" in a wide variety of ways and would circumvent the mass mailing prohibition.

You also inquired if the mass mailing prohibition applies to the placement or location of the distribution box. Materials which members of the public pick up for themselves at a meeting, public library, or other city, county or state governmental office or agency are considered sent in response to an unsolicited request. (Regulation 18901(h).) This exception does not apply to materials made available at private locations unless a meeting of the public agency or official is being held.

In response to your final question, Regulation 18901(c) states that a newsletter or other mass mailing may not be sent at public expense if:

- (1) The name of the elected officer or his photograph appears on the document; and
 - (A) The elected officer exercises direction and control over the content, production, or distribution of the document, or
 - (B) The document is sent at the request or suggestion of the elected officer or his or her agent; or
 - (C) The document is signed by, or is designated as being from, the elected officer or his or her office; or

Bob Connelly
April 18, 1989
Page 4

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(i) The elected officer is featured in the document; or


(ii) The name, office or other reference to the elected officer or his or her photograph appears on the document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

The regulation explicitly states that a mass mailing generally may not contain the name, office or photograph of the elected officer. However, as stated above, the regulation provides an exception for materials which are sent in response to an unsolicited request. Since materials sent in response to an unsolicited request are not subject to the mass mailing prohibition, such materials may include the name, office or photograph of the elected officer. Accordingly, the prohibition also does not apply to the distribution box which contains the materials, as long as the distribution box is located in a public office or where a meeting of the officer's agency is being held.

I hope this answers your questions regarding the mass mailing provisions as they pertain to your distribution box. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

By:  Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

Enclosures

MEMBERS

BILL FILANTE
Vice Chair
JACK O'CONNELL
Majority Vice Chair

CHIEF ADMINISTRATIVE OFFICER
BOB CONNELLY

EXECUTIVE SECRETARY
TERRIE F. WILFONG

California Legislature

Assembly Rules Committee

LUCY RILLEA
RICHARD MOUNTJOY
PAT NOLAN
RICHARD POLANCO
JACKIE SPEIER
CATHIE WRIGHT

ROOM 3016 - STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CALIFORNIA 94249-0001
TELEPHONE (916) 445-8173

TOM BANE
CHAIRMAN

April 5, 1989

Ms. Diane Griffiths
General Counsel
Fair Political Practices
Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Griffiths:

Please associate the following questions with the distribution box left at your offices (reference #89156):

1. Would printed material picked up (presumably one at a time) be considered unsolicited by the member responsible for the printing?
2. If so, would it matter whether other information unrelated to the question of solicitation appeared on the back of the distribution box? (picture? logo? members name and/or district?)
3. Would the placement of the box have any conceivable effect on the question of whether the public had been "solicited"? e.g., if left in a state agency?, a private retail establishment with the permission of the owner?, a local government agency?, someone's home?, on the street?, etc.

Thank you for your attention to this problem.

Sincerely,



BOB CONNELLY
Chief Administrative Officer

BC:jr

Yellow display box

MEMBERS

BILL FILANTE
Vice Chair
JACK O'CONNELL
Majority Vice Chair

LUCY KILLEA
RICHARD MOUNTJOY
PAT NOIAN
RICHARD POLANCO
JACKIE SPEIER
CATHIE WRIGHT

CHIEF ADMINISTRATIVE OFFICER
BOB CONNELLY

EXECUTIVE SECRETARY
TERRIE F. WILFONG

California Legislature

Assembly Rules Committee

ROOM 3016 — STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CALIFORNIA 94249-0001
TELEPHONE: (916) 445-8173

TOM BANE
CHAIRMAN

April 5, 1989

Ms. Diane Griffiths
General Counsel
Fair Political Practices
Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Griffiths:

Please associate the following questions with the distribution box left at your offices (reference #89156):

1. Would printed material picked up (presumably one at a time) be considered unsolicited by the member responsible for the printing?
2. If so, would it matter whether other information unrelated to the question of solicitation appeared on the back of the distribution box? (picture? logo? members name and/or district?)
3. Would the placement of the box have any conceivable effect on the question of whether the public had been "solicited"? e.g., if left in a state agency?, a private retail establishment with the permission of the owner?, a local government agency?, someone's home?, on the street?, etc.

Thank you for your attention to this problem.

Sincerely,

Bob Connelly

BOB CONNELLY
Chief Administrative Officer

BC:jr



California Fair Political Practices Commission

April 7, 1989

Bob Connelly
Chief Administrative Officer
Assemblymember Tom Banes
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-198

Dear Mr. Connelly:

Your letter requesting advice under the Political Reform Act was received on April 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh

cc: Bill Cavala